IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 132 of 1997

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
KAUSHIKBHAI SHANKERCHAND PATEL & 2 - Opponent(s)

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Appearance :
MR AJ DESAI for Appellant(s) : 1,
None for Opponent(s) : 1,
NOTICE SERVED for Opponent(s) : 2,
MR DK MODI for Opponent(s) : 2 - 3.
MR MD MODI for Opponent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1. This appeal is directed against the judgement and order dated 22nd November 1996 passed by the learned Judicial Magistrate, First Class, Viramgam, in Criminal Case No.683 of 1992 whereby the learned Judge has acquitted the respondents of the offences under sections 2, 7 and 16 of the Food Adulteration Act as alleged against them.

2. The case case of prosecution was that on 15.1.1992 the Food Inspector visited the premises of the respondent, collected sample of “Singtel” and after completing formalities sent the same for laboratory testing. Upon testing it was alleged that the same was adulterated and therefore a complaint came to be filed against the respondents for the alleged commission of offence under section 16(1)(l)(2) of the Act.

3. After recording necessary evidence the learned Magistrate acquitted the respondents of the offences with which they were charged by the aforesaid judgement and order. It is against the said judgement and order the present

appeal has been filed at the instance of the State.

4. Mr. A.J. Desai, learned APP appearing for the State submitted that the learned Magistrate has erred in acquitting the respondent no.2 on the ground that the prosecution has failed to prove that he is not a partner of the firm. He submitted that the trial court grossly erred in acquitting the accused on the ground that accused no.2 was not present when the sample was collected by the complainant. He, therefore submitted that the appeal deserves to be allowed.

5. Learned Advocate for the respondents submitted that the learned Magistrate has considered all the aspects and evidence on record and did not find sufficient evidence to convict the respondent and therefore this Court may not interfere with the impugned judgement and order.

6. At the outset it is required to be noted that the scope and power of the appellate court to interfere in appeal against acquittal is now well settled. In the case of State of Goa Vs. Sanjay Thakran, reported in (2007)3 SCC 755, the Apex Court held that the appellate court can review the evidence and interfere with the order of acquittal only if the approach of lower court is vitiated by some manifest illegality or the

decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. Para 16 of the said decision reads as under:

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgement delivered by the Court below. However,the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

7. I have heard learned Advocates for the respective parties. As a result of hearing and perusal of the record it is found from the record that it is not established from the record that Shri D.T. Brahbhatt was legally appointed as local health authority and therefore the consent was given by a person not authorised under the law. Further it was fond that the original accused no.1 has died and that it was not

established that the accused no.2 was a partner of the firm in question. Apart from that the method for collection of sample was also contrary to the rules. Learned Advocate for the appellant is not in a position to point out anything contrary to the aforesaid facts even in this appeal. There is nothing on record to show that the approach of the trial court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. I am in complete agreement with the reasonings adopted and findings arrived at by the Trial court. However, I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

8. In the premises aforesaid, the appeal is required to be dismissed and is accordingly dismissed. R & P, if lying in this Court, shall be sent back forthwith.

[K.S. JHAVERI, J.]

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